

MEMORANDUM OF UNDERSTANDING BETWEEN SANTA FE COUNTY AND OSHARA VILLAGE, LLC

This Memorandum of Understanding (hereinafter referred to as the "Agreement") is made and entered into this 30th day of May, 2006, by and between the Board of County Commissioners of Santa Fe County, New Mexico (the "County"), a political subdivision organized and existing under the Laws of the State of New Mexico, and Oshara Village, LLC ("Oshara").

RECITALS

A. Oshara is the developer of a mixed-used, commercial and residential development located in Santa Fe County and known as "Oshara Village."

B. On June 14, 2005, the Board of County Commissioners for Santa Fe County granted Oshara's application for final development plan/plat approval for Phase I of Oshara Village subject to certain conditions, including, but not limited to, Oshara's obligation to construct a new road, known as the Northeast Connector extending from the intersection of St. Francis Drive and Rabbit Road to Richards Avenue through Phase I of Oshara Village (the "Northeast Connector"). A portion of the Northeast Connector includes that portion of existing Rabbit Road from the intersection of St. Francis Drive and Rabbit Road to the current western terminus of Rabbit Road.

C. The County and the New Mexico Department of Transportation ("NMDOT") have entered into that certain Memorandum of Understanding regarding the Northeast Connector ("County-NMDOT Agreement"), which agreement obligates the County to design, construct and maintain the Northeast Connector, and contemplates that the NMDOT will grant an easement to the County for a portion of the Northeast Connector for that purpose.

D. The County and Oshara have agreed that Oshara will assume the obligations of the County to design and construct the Northeast Connector pursuant to the Memorandum of Understanding.

E. The County and Oshara wish to memorialize their agreement with respect to Oshara's assumption of the County's obligations to construct the Northeast Connector as specifically set forth herein.

AGREEMENTS

NOW, THEREFORE, in consideration of the promises and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows

1. Assumption by Oshara.

(a) Oshara assumes the County's obligations under the County-NMDOT Agreement to design and construct, and pay for the design and construction of, the Northeast Connector from the intersection of St. Francis Drive and Rabbit Road through Phase I of Oshara Village to Richards Avenue.

(b) Oshara assumes the County's obligations under the County-NMDOT Agreement to design and construct, and pay for, any modifications or upgrades that may be required of the County under the County-NMDOT Agreement for the existing portion of the Northeast Connector, specifically to the existing portion of Rabbit Road and/or the intersection of St. Francis Drive and Old Aqua Fria Road (aka Rabbit Road). Additionally, Oshara shall pay for the costs (to the extent not covered by state, federal or other governmental funding) to upgrade the existing railroad crossing that intersects Rabbit Road if and to the extent the County is required under the County-NMDOT Agreement to upgrade said crossing. Prior to finalizing of the design of the Northeast Connector, Oshara shall meet with representatives of the County's Public Works Department and review the proposed design and obtain approval thereof from the County's Public Works Director, which approval shall not be unreasonably withheld and shall be limited to confirmation that the design and construction proposed by Oshara is in accordance with the standards for construction of the Northeast Connector as set forth in this Agreement and the County-NMDOT Agreement. Prior to beginning any construction, Oshara shall consult with representatives of the County's Public Works Department and review the proposed construction, and obtain approval for the commencement of construction from the County's Public Works Director. Following construction, Oshara shall apply to the County Public Works Department for acceptance of the Northeast Connector as a County road and shall make all changes required by the County Public Works Director and County road policy.

2. Construction Schedule. Oshara shall construct the Northeast Connector, make modifications and upgrades to the existing portion of the Northeast Connector and the aforementioned railroad crossing, as required herein, and provide the County with performance bonds for such construction and modifications, in accordance with final subdivision plat approvals and/or conditions of such approvals granted by the County for the various phases of Oshara Village. Oshara shall have no obligation to construct the Northeast Connector, or make modifications or upgrades to the existing portion of the Northeast Connector, in order to satisfy the requirements, obligations, approvals or needs arising from or relating to developments, projects or conditions other than as specifically required by the County for final subdivision plat approval for the various phases of Oshara Village.

3. Fair Share. Oshara shall endeavor to obtain a binding written "fair share" agreement from property owners and/or developers whose developments, or phases thereof, will contribute to the volume of traffic using the Northeast Connector. Under such agreement, the parties will make financial contributions or reimbursements for the costs to construct, modify and/or upgrade the Northeast Connector pursuant to this Agreement. The County shall reasonably cooperate with Oshara in its efforts to obtain such an agreement. If Oshara is unsuccessful in obtaining such an agreement within

six months after the date of this Agreement, then the County may, at its option, create and implement a "fair share" program under which the County shall take such steps, to the extent permitted by applicable law, to require such property owners and/or developers to contribute financially to the costs for the design and construction of the Northeast Connector and for modifications and upgrades made pursuant to this Agreement. Said contributions, if required, will be made pursuant to a reasonable formula that requires contributions in proportion to the volume of traffic from a development, or phase thereof, that will use the Northeast Connector, or portions thereof, based on reasonable estimates derived from traffic studies approved by the County, or some other reasonable method. Nothing in this provision shall prevent the County from imposing such requirement before the expiration of said six-month period with respect to developments seeking approvals prior to the expiration of said period.

4. Right to Construct Northeast Connector. The County grants to Oshara the full and irrevocable right, so long as Oshara is not in default of its obligations under this Agreement, to construct the Northeast Connector, or make modifications or upgrades to existing portions of the Northeast Connector, as required herein, within and under the easement granted to the County pursuant to the County-NMDOT Agreement as well as within and under the right-of-way in which the existing portion of Rabbit Road is located. The County shall cooperate with Oshara's performance of its obligations under this Agreement.

5. Condition to Oshara's Obligations. Oshara's obligations under this Agreement are subject to and contingent upon the granting of the easement for the Northeast Connector as contemplated by the County-NMDOT Agreement, including the granting of all necessary approvals by the Federal Highway Administration for the granting and creation of said easement. Oshara may terminate this Agreement in the event that the County-NMDOT Agreement is terminated.

6. Insurance and Indemnification. Oshara shall obtain insurance for protection from claims for damages because of bodily injury, including death, and claims for damages to property, caused by and during Oshara's operations in constructing or modifying the Northeast Connector pursuant to this Agreement, whether such operations are performed by Oshara or its agents, contractors or its assigns. The County shall be named as an additional insured and a certificate holder on all such policies of insurance obtained pursuant to the requirements of this paragraph. To the fullest extent provided by law, Oshara shall indemnify the County for any such claims asserted against the County.

7. Severability. In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

8. Merger. This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written

Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

9. Amendment. This Agreement shall not be altered, changed or amended except by an instrument in writing and executed by the parties hereto.

10. Governing Law. This Agreement, and the parties rights and obligations hereunder, shall be governed by New Mexico law.

11. Recitals. Each and all of the recitals set forth at the beginning of this instrument are hereby incorporated herein by this reference.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns. Oshara may assign its obligations under this Agreement to another entity with the express written consent of the County.

13. Captions. The captions and paragraph headings of this Agreement are not necessarily descriptive, or intended or represented to be descriptive, of all the provisions thereunder, and in no manner shall such captions and paragraph headings be deemed or interpreted to limit the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

OSHARA VILLAGE, LLC

By

[Signature]
Name *Alan Hoffman*
Title *Managing Member*

**THE BOARD OF COUNTY
COMMISSIONERS
OF SANTA FE COUNTY**

By

[Signature]
Harry B. Montoya, Chair

ATTEST:

[Signature]
Valerie Espinoza, County Clerk



Approved as to form:



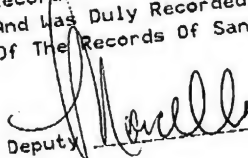
Stephen C. Ross, County Attorney



MEMO OF AGREEMENT(N/C)
PAGES: 5

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

I Hereby Certify That This Instrument Was Filed for
Record On The 13TH Day Of June, A.D., 2006 at 16:18
And Was Duly Recorded as Instrument # 1437652
Of The Records Of Santa Fe County

Deputy  Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

